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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91189418
Party	Plaintiff Speed Channel, Inc.
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EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Speed Channel, Inc.

Opposer,

v.

Phoenix 2008 LLC,

Applicant.

Opposition No. 91189418

Application Serial No. 77476098
Filed May 15, 2008
SPEEDVISION

Application Serial No. 77497086
Filed June 12, 2008
SPEEDVISION

Application Serial No. 77476107
Filed May 15, 2008
SPEEDVISION HD

Application Serial No. 77478035
Filed May 19, 2008
SPEEDVISION (and design)

**APPLICANT'S RESPONSE TO OPPOSER'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Applicant Phoenix 2008 LLC ("Applicant") hereby responds to Opposer Speed Channel, Inc.'s ("Opposer") First Request for Production of Documents ("Requests").

GENERAL OBJECTIONS

Applicant objects to Opposer's Requests to the extent that such Requests are not relevant to the claims asserted in this proceeding, or not calculated to lead to the discovery of admissible evidence.

Applicant objects to Opposer's Requests to the extent that such Requests relate to matters that are protected by the attorney-client privilege, the attorney work product privilege, or any other applicable privilege.

Applicant objects to Opposer's Requests to the extent that such Requests, including their definitions and instructions, seek to impose any obligation on Applicant beyond that required by the Federal Rules of Civil Procedure or the United States Patent and Trademark Office.

In responding to these Requests, Applicant does not waive any of the foregoing objections, or the specific objections set forth in the responses to particular Requests. By making these responses, Applicant does not concede that its responses are relevant to this action or calculated to lead to the discovery of admissible evidence. Applicant expressly reserves the right to object to further discovery into the subject matter of these Requests, to the introduction into evidence of any response or portion thereof, and to supplement its response should further investigation disclose responsive information.

Applicant incorporates by reference the foregoing general objections into each of the responses below.

SPECIFIC OBJECTIONS AND RESPONSES

REQUEST NO. 1:

All documents identified in response to Opposer's First Set of Interrogatories to Applicant served on June 4, 2009.

RESPONSE:

Any document identified in response to any of Opposer's Interrogatories shall be disclosed to Opposer subject to any applicable objection or privilege.

REQUEST NO. 2:

All documents concerning the creation or adoption of Applicant's Marks including why and how Applicant's Marks were adopted.

RESPONSE:

Applicant objects to Request No. 2 to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

REQUEST NO. 3:

All documents concerning Applicant's use or proposed use of the word element SPEED, or any mark that includes in whole or in part the word element SPEED, other than Applicant's Marks, within the United States.

RESPONSE:

Applicant objects to Request No. 3 on the ground that it is vague and ambiguous. It is not clear whether Opposer seeks "documents concerning ... any mark that includes in whole or in part the word element SPEED," or "documents concerning ... Applicant's use ... of ... any mark that includes in whole or in part the word element SPEED." Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, non-privileged documents concerning Applicant's use or proposed use of SPEED consist of the Opposed Applications, which are already publicly available to Opposer.

REQUEST NO. 4:

All documents that support the allegation made in the Opposed Applications that, at the time that Applicant filed the Opposed Applications, Applicant had a *bona fide* intent to use the mark identified in each of the Opposed Applications for each of the goods and services identified therein.

RESPONSE:

Applicant objects to Request No. 4 to the extent that it seeks documents that are publicly available from the PTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, these objections, non-privileged documents responsive to this Request consist of the Opposed Applications, which were filed on an intent-to-use basis and are already publicly available to Opposer.

REQUEST NO. 5:

To the extent that you claim that third parties used the word element "SPEED" in connection with marks for goods in International Class 38,41, or either of them, or are

otherwise intending to rely on any such third party marks, all documents concerning such third party marks including all research or investigations about such third party marks.

RESPONSE:

Applicant objects to Request No. 5 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 6:

All documents concerning any investigation by Applicant regarding Speed or the sale of products or services under the Speed Marks, including without limitation where the products or services are sold or otherwise provided, the consumers of such products or services and the trade channels of such products or services.

RESPONSE:

Applicant objects to Request No. 6 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, these objections, Applicant has not identified any non-privileged documents responsive to this Request.

REQUEST NO. 7:

All documents that identify the actual or intended trade channels for goods sold or services provided, or to be sold or provided, under Applicant's Marks within the United States.

RESPONSE:

Applicant has not identified any documents responsive to this Request.

REQUEST NO. 8:

All documents concerning the clearance of Applicant's Marks within the United States, including without limitation any legal opinions regarding Applicant's Marks, the Speed Marks, the Speedvision Mark, or any of them.

RESPONSE:

Applicant objects to Request No. 8 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product

doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

REQUEST NO. 9:

All search reports obtained for or reviewed by or on behalf of Applicant in connection with adopting or clearing Applicant's Marks in the United States.

RESPONSE:

Applicant has not identified any documents responsive to this Request.

REQUEST NO. 10:

All documents concerning the meaning or commercial impression of Applicant's Marks within the United States.

RESPONSE:

Applicant has not identified any documents responsive to this Request.

REQUEST NO. 11:

All documents concerning any investigations of any marks done by or on behalf of Applicant in connection with clearing Applicant's Marks in the United States.

RESPONSE:

Applicant objects to Request No. 11 to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 12:

All documents concerning the actual or planned advertising and marketing of the goods or services offered or to be offered under Applicant's Marks in the United States.

RESPONSE:

Applicant has not identified any documents responsive to this Request.

REQUEST NO. 13:

Representative samples of advertisements (regardless of media), signage, point of sale displays, catalogues, brochures, promotional materials and other marketing materials showing the manner in which Applicant has used or intends to use Applicant's Marks in the United States.

RESPONSE:

Applicant has not identified any documents responsive to this Request.

REQUEST NO. 14:

Representative samples of goods offered or sold, services offered or provided, or intended to be offered, sold or provided, under Applicant's Marks within the United States.

RESPONSE:

Applicant has not identified any documents responsive to this Request.

REQUEST NO. 15:

Documents sufficient to show the goods on or services in connection with Applicant actually uses, or intends to use, Applicant's Marks in the United States.

RESPONSE:

Applicant objects to Request No. 15 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that that the request for documents sufficient to show goods or services "in connection with Applicant actually uses, or intends to use..." is incomprehensible. Subject to, and without waiver of, this objection, documents responsive to this Request consist of the Opposed Applications, which are already publicly available to Opposer.

REQUEST NO. 16:

Documents sufficient to show the dates of first use of Applicant's Marks in the United States,

RESPONSE:

Applicant has not identified any documents responsive to this Request.

REQUEST NO. 17:

Documents sufficient to show how Applicant's Marks are, or will be, actually used in commerce in the United States and the dates of first use.

RESPONSE:

Applicant objects to Request No. 17 to the extent that it seeks documents that are publicly available from the USPTO. Subject to, and without waiver of, this objection, documents

responsive to this Request consist of the Opposed Applications, which are already publicly available to Opposer.

REQUEST NO. 18:

All Documents concerning Applicant's business plans for offering goods or providing services under Applicant's Marks or any other name or mark that includes the word element SPEED within the United States.

RESPONSE:

Applicant has not identified any documents responsive to this Request.

REQUEST NO. 19:

All documents concerning any plans to expand the goods offered the services provided under Applicant's Marks beyond those identified in the Opposed Applications, within the United States.

RESPONSE:

Applicant has not identified any documents responsive to this Request.

REQUEST NO. 20:

Press releases, press kits, or news clippings concerning Applicant.

RESPONSE:

Applicant has not identified any documents responsive to this Request.

REQUEST NO. 21:

All documents concerning Agreements, including any drafts, whether or not currently in force, and negotiations with any person or entity concerning Applicant's Marks in the United States.

RESPONSE:

Applicant objects to Request No. 21 on the ground that it is vague and ambiguous to the extent that the term "Agreements" is not defined. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

REQUEST NO. 22:

All documents concerning any agreements, whether or not they are currently in force, including documents relating to the use or intended use of Applicant's Marks in the United States.

RESPONSE:

Applicant objects to Request No. 22 to the extent that it is duplicative of Request No. 21. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

REQUEST NO. 23:

All documents concerning market research whether conducted for marketing purposes, litigation purposes, or other purposes, which relates or refers to Applicant, Applicant's Marks, Speed, the Speed Marks, the Speedvision Mark, or any of the foregoing.

RESPONSE:

Applicant objects to Request No. 23 to the extent that it is overbroad and unduly burdensome. Applicant further objects to the extent that the request seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 24:

All documents concerning investigations into the nature of Speed's use of the Speed Marks, the Speedvision Mark, or any of the foregoing, in the United States.

RESPONSE:

Applicant objects to Request No. 24 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, these objections, Applicant has not identified any non-privileged documents responsive to this Request.

REQUEST NO. 25:

All documents referring to, relating to, or concerning the Speed Mark, products sold and services provided, other than the pleadings in this opposition proceeding or communications and correspondence between counsel for the parties in this proceeding.

RESPONSE:

Applicant objects to Request No. 25 to the extent that it is overbroad and unduly burdensome. Applicant further objects to the extent that the request seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 26:

All documents referring to, relating to, or concerning Applicant's Marks, products sold, or to be sold, services provided, or to be provided, thereunder, other than the pleadings in this opposition proceeding or communications and correspondence between counsel for the parties in this proceeding.

RESPONSE:

Applicant objects to Request No. 26 to the extent that it is overbroad and unduly burdensome. Applicant further objects to the extent that the request seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 27:

All documents in Applicant's possession regarding Speed, the Speed Marks, the Speedvision Mark, or any of them, including documents relating to Applicant's first awareness of Speed, the Speed Marks, the Speedvision Mark, or any of them.

RESPONSE:

Applicant objects to Request No. 27 to the extent that it is overbroad and unduly burdensome. Applicant further objects to the extent that the request seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 28:

Documents sufficient to show Applicant's total actual or planned expenditures to advertise, market or promote the goods or services offered under Applicant's Marks within the United States.

RESPONSE:

Applicant has not identified any documents responsive to this Request.

REQUEST NO. 29:

Documents sufficient to show Applicant's total sales under Applicant's Marks, Applicant's anticipated sales under Applicant's Marks, or both, within the United States.

RESPONSE:

Applicant has not identified any documents responsive to this Request.

REQUEST NO. 30:

All Documents evidencing financial projections, budgets, marketing or advertising forecasts or projections related to Applicant's use or planned use of Applicant's Marks in the United States.

RESPONSE:

Applicant has not identified any documents responsive to this Request.

REQUEST NO. 31:

All documents that support or contravene Applicant's denial of any allegation set forth in Opposer's Notice of Opposition, including the specific allegation(s) to which the documents relate.

RESPONSE:

Applicant objects to Request No. 31 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 32:

All documents that support or contravene Applicant's Affirmative Defenses, including the specific Affirmative Defense(s) to which the documents relate.

RESPONSE:

Applicant objects to Request No. 32 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 33:

All documents that Applicant intends to introduce during its trial testimony.

RESPONSE:

Applicant has not completed its investigation of this matter, and, therefore, has not yet identified which documents it intends to introduce during its trial testimony.

REQUEST NO. 34:

All documents concerning any instructions by Applicant to preserve electronically stored information.

RESPONSE:

Applicant has not identified any documents responsive to this Request.

REQUEST NO. 35:

Documents sufficient to show Applicant's document retention and document destruction policies.

RESPONSE:

Applicant has not identified any documents responsive to this Request.

REQUEST NO. 36:

All documents identified in Applicant's Initial Disclosures.

RESPONSE:

Applicant has disclosed all relevant and non-privileged documents that it has identified to be responsive to Opposer's Document Requests and Interrogatories.

REQUEST NO. 37:

Drafts of all documents responsive to any of the foregoing Requests.

RESPONSE:

Applicant objects to Request No. 37 to the extent that it is overbroad and unduly burdensome. Applicant further objects to the extent that the request seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible

evidence. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 38:

Applicant's current organizational chart.

RESPONSE:

Applicant objects to Request No. 38 to the extent that it seeks documents that are not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiver of, this objection, Applicant has not identified any documents responsive to this Request.

REQUEST NO. 39:

Documents sufficient to identify each of Applicant's officers, managers and members.

RESPONSE:

Applicant objects to Request No. 39 to the extent that it seeks documents that are not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiver of, this objection, Applicant has not identified any documents responsive to this Request.

REQUEST NO. 40:

All documents related to Speedvision Network LLC.

RESPONSE:

Applicant objects to Request No. 40 to the extent that it is overbroad and unduly burdensome. Applicant further objects to the extent that the request seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 41:

All documents and things related to any use of the Speedvision Mark within the United States to refer to Speed by any person or entity.

RESPONSE:

Applicant has not identified any documents responsive to this Request.

REQUEST NO. 42:

All documents and things related to consumers association of the Speedvision Mark with Speed, Speed's products, Speed's services, or any of the foregoing.

RESPONSE:

Applicant objects to Request No. 42 to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

REQUEST NO. 43:

All documents and things related to consumers referring to Speed as Speedvision from December 4, 2004, through and including the date that Applicant responds to these Requests.

RESPONSE:

Applicant objects to Request No. 43 to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

REQUEST NO. 44:

All documents and things prepared by or for Applicant that relate to consumers' association, or lack of association, of Speed with the Speedvision Mark.

RESPONSE:

Applicant objects to Request No. 44 to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

REQUEST NO. 45:

All documents and things prepared by or for Applicant that relate to Speed's rights in the Speedvision Mark.

RESPONSE:

Applicant objects to Request No. 45 to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and

without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

REQUEST NO. 46:

All documents and things related to consumers association of the Speed Marks with Speed, Speed's products, Speed's services, or any of the foregoing.

RESPONSE:

Applicant objects to Request No. 46 to the extent that it seeks documents that are not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 47:

All documents and things related to consumers referring to Speed using the Speed Marks.

RESPONSE:

Applicant objects to Request No. 47 to the extent that it seeks documents that are not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 48:

All documents and things prepared by or for Applicant that relate to consumers' association, or lack of association, of Speed with the Speed Marks.

RESPONSE:

Applicant objects to Request No. 48 to the extent that it seeks documents that are not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 49:

All documents and things prepared by or for Applicant that relate to Speed's rights in the Speed Marks.

RESPONSE:

Applicant objects to Request No. 49 to the extent that it seeks documents that are not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 49*:¹

All documents and things that support or contravene Applicant's denial of Speed's claim that Applicant's Mark is confusingly similar to the Speed Marks, the Speedvision Marks, or any of them.

RESPONSE:

Applicant objects to Request No. 49* to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Oppose is already in possession of Applicant's April 3, 2009 letter to Daniel E. Bruso, Esq., counsel for Opposer, in response to Opposer's March 25, 2009 letter to Brian J. Hurh, Esq., counsel for Applicant.

¹ Opposer's First Set of Document Requests includes two requests entitled "Request No. 49." To the extent that Applicant makes any reference to one of these requests, Applicant will refer to the second request as Request No. 49*, as indicated above.

Respectfully Submitted,

PHOENIX 2008 LLC

By:



Brian J. Hurh

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Suite 200
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Its Attorneys

July 13, 2009

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing "Applicant's Response to Opposer's First Set of Document Requests" was sent via first class mail, postage prepaid, this 13th day of July, 2009 to the following:

Daniel E. Bruso, Esq.
Cantor Colburn LLP
20 Church Street, 22nd Floor
Hartford, CT 06103-3207

A handwritten signature in black ink, appearing to read "Daniel E. Bruso", written over a horizontal line.